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EXAMINER

FETSUGA, ROBERT M

ART UNIT PAPER NUMBER

3751

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/890,113

Applicant(s)

BRAUN, ULRICH

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 7-10,17,19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 11-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                         |                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____                                                |

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1. Claims 7-10, 17, 19 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).
2. The drawings filed March 31, 2005 are acceptable per applicant's explanation at pages 10-11 of the response filed on even date therewith.
3. The drawings are objected to because reference numeral "202" (par. 0024 ln. 3 and par. 0029 ln. 1) is missing, and reference numeral "203" (par. 0029 ln. 3) is missing.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "device for flushing the entire toilet bowl" set forth in claims 1 and 11, and "partition wall" set forth in claims 1 and 13, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Applicant argues at pages 12-13 of the response element "E" added to the drawings illustrates the noted flushing device. The examiner can not agree, and notes element "E" is merely a schematic showing. However, such schematic does not teach one how the entire bowl is flushed, particularly considering the bowl structure illustrated in Fig. 1. Furthermore, the bowl and flushing device taught in Geeham '136 appears to differ substantially from the bowl and flushing device illustrated by applicant. Applicant argues at pages 11-12 and 16-17 of the

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response one of "skill in the art" would understand that the claims recite a device that "does not rely upon a partition wall." The examiner can not agree, and notes applicant has not provided any evidence in support of what one of "skill in the art" would consider the noted partition wall to comprise.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "partition wall" set forth in claims 1 and 13, and "hydraulically connected" language set forth in claim 11, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant argues at pages 11-12 and 16-17 of the response one of "skill in the art" would understand that the claims recite a device that "does not rely upon a partition wall." The examiner can not agree, and notes applicant has not provided any evidence in support of what one of "skill in the art" would consider the noted partition wall to comprise. Applicant argues at page 13 of the response this subject matter is defined at paragraph 0002. The examiner can not agree as the noted paragraph does not provide any evidence in support of what one would consider the noted partition wall to comprise. Furthermore, paragraph 0002 does not reference the drawings.

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5. The disclosure is objected to because of the following informalities: Paragraph 0013, line 3, reference numeral "14" apparently should be deleted; paragraph 0025 apparently should be deleted; paragraph 0030, line 1, "Figure 3" apparently should be --Figures 3A and 3B--; paragraph 0032, line 1, and paragraph 0033, line 1, reference numeral "8" designates different elements; paragraph 0035, line 3, and paragraph 0038, line 1, reference numerals "19" and "21" designate different elements; and paragraph 0043, line 1, "Detail A" apparently should be --Figure 3B--.

Appropriate correction is required.

6. Claims 1, 2, 4-6 and 11-16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1 and 11 recite a "urine separating toilet... for separately collecting and draining faeces and urine". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. No practical ability to separate urine and feces has been disclosed. In fact, Fig. 1 illustrates the urine siphon 6 and faecal siphon 1

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as having inlets communicating with a single toilet bowl and outlets communicating with a single drain. Furthermore, how the opening device is activated by one sitting down on the toilet bowl has not been disclosed. Still further, how the seat A remains "tipped up" against the bias of closing device 26 is not disclosed.

Applicant argues at pages 15-16 of the response the devices for opening and closing the urine outlet, as well as the decoupling of the toilet flushing mechanism, assures urine and feces are separated. The examiner can not agree as one could easily deposit urine in the fecal outlet and feces in the urine outlet. The devices/decoupling argued by applicant would not prevent such use. Furthermore, paragraphs 0001 and 0002 of the instant specification, so often referred to by applicant in support of understanding the claimed invention, include no discussion concerning collecting feces or urine.

7. Claims 1, 2, 4-6 and 11-16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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Claims 1 and 11 recite "a device for flushing the entire toilet bowl". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. Given the schematic illustration of flushing device E in Fig. 3A, and the particular toilet bowl structure illustrated in Fig. 1, an ability to flush the entire bowl is not taught thereby regardless of how well known or predictable toilet flushing devices are.

Applicant argues at pages 12-13 and 16 of the response Geeham '136 teaches the claimed subject matter. However, the flushing device in Geeham '136 appears to differ substantially from the bowl and flushing device illustrated by applicant.

8. Claims 1, 2, 4-6 and 11-16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites "wherein no partition wall is located between the urine outlet and the faecal outlet". This subject matter is not defined in the originally filed disclosure and therefore lacks an adequate written description. Furthermore, there appears to be a "partition wall" illustrated in Fig. 2



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separating elements 2 and 3. Claim 13 recites similar subject matter.

Applicant argues at pages 16-17 of the response paragraph 0001 of the instant specification provides adequate written description of the claimed invention. The examiner can not agree as the noted paragraph discusses a "method" and claim 1 recites a "device".

9. Claims 6, 11 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is unclear as to whether the "toilet" is intended to be part of the claimed combination since structure of the "device" is defined as being connected thereto (ln. 2), but no positive structural antecedent basis therefor has been defined. Applicant's amendment to claim 6 does not address the issue raised.

Claim 11 is unclear as to whether the "toilet" is intended to be part of the claimed combination since structure of the "device" is defined as being connected thereto (lns. 4-5), but no positive structural antecedent basis therefor has been defined. Applicant's amendment to claim 11 does not address the issue raised.

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Claim 16 is unclear as to whether the "toilet" is intended to be part of the claimed combination since structure of the "device" is defined as being connected thereto (ln. 2), but no positive structural antecedent basis therefor has been defined. Applicant did not address the rejection in the response.

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 2, 4-6 and 11-16, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Geeham '850.

The Geeham '850 (Geeham) reference discloses a device comprising: a device for opening 18; a device for closing 52b; a device for flushing 22; "no partition wall" (in the same sense as with applicant's disclosed device) as outlets 28,45 communicate with a common drain 36; a feature 65; and a toilet 10 including a urine outlet 58, a fecal outlet 30, a bowl 12 having protrusions (Fig. 1, at 34), and a seat (top of 12), as claimed. Re claim 1, the Geeham opening and closing devices are capable of being used in the functionally recited manner.

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Applicant did not address this grounds of rejection in the response.

12. Claims 1, 2, 4-6 and 11-16, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Wilhelm.

The Wilhelm reference discloses a device comprising: a device for opening 43; a device for closing 41; a device for flushing 5; "no partition wall" (in the same sense as with applicant's disclosed device) as outlets 17,22 communicate with a common drain 19; a feature (col. 2 lns. 62-65); and a toilet 1 including a urine outlet 22, a fecal outlet (inlet to 17), a bowl 16 having protrusions (Fig. 1, at 22), and a seat (top of 16), as claimed. Re claim 1, the Wilhelm opening and closing devices are capable of being used in the functionally recited manner.

Applicant argues at page 21 of the response the claimed device "requires" a particular flushing device. The examiner can not agree as claim 1 prefaces recitation of the argued subject matter by the broad language "and/or". In any event, the liquid level 13 in Wilhelm is not "around or upon" the closed outlet 22 (see Fig. 1). Applicant argues at pages 21-22 of the response the Wilhelm device can not function as the claimed device does. The examiner can not agree. Again, the argued claim language includes the broad recitation of "or". In

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any event, the opening and closing devices of the Wilhelm disclosure will operate whether or not one is seated on the toilet, or whether one tips the seat backward, as no connection between these elements is taught therein.

13. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

14. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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15. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga  
Primary Examiner  
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